IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 728 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAIPUR GOLDEN TRANSPORT PRIVATE CO. - Appellant(s)

Versus

GUJARAT GINNING AND MANUFACTURING COMPANY LIMITED - Defendant(s)

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Appearance :

MR AC GANDHI for Appellant(s) : 1,
MR RAJESH K SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 14/12/2005

ORAL JUDGMENT

This First Appeal arises out of a judgment and decree rendered by the learned Judge presiding over Court No.4 of the City Civil and Sessions Court, Ahmedabad in Civil Suit No.3782 of 1980 on 23/1/1985.

2.The appellant was the defendant in that suit and the respondent had filed that suit. For the sake of convenience, the appellant is referred to as the defendant and the respondent as the plaintiff in this judgment.

3.The plaintiff had filed the suit for possession of land ad-measuring 118' x 93', forming part of Survey No.219 of Sheharkotda, Tal.City, Dist: Ahmedabad situate in the Gujarat Ginning Mill Compound, outside Prem Darwaja, Ahmedabad. Somehow the business was closed down and some of the portion of the properties of the company were let out to the different persons. The defendant hired two godowns bearing Survey No.219/7 and 219/4, forming part of Survey No.219. The godowns are superstructure. These godowns are surrounded by extensive open pieces of land belonging to the plaintiff. The lease was in respect of the superstructure of the said two godowns. It is the case of the plaintiff that defendant on 28th November, 1980 illegally trespassed upon land ad-measuring 118' x 93', that is about 1246 square yards located to the north of the two godowns hired by the defendant (these pieces of land would be herein after referred to as

"the suit property"). The defendant illegally and unauthorizedly occupied the suit property and started making use thereof. The defendant was asked to vacate the same on 28th November, 1980 and to stop the unauthorized use thereof and to put the plaintiff in possession of the suit property. The case of the plaintiff further was that the defendant was trying to cordon the suit property by fencing and therefore, the suit was filed. The plaintiff claimed mesne profit @ Rs.2/- per square yard per day.

4. On the other hand, the case of the defendant is that the suit is against a wrong person and suffers from vice of mis-joinder of parties. It is the case of the defendant that the plaintiff had no right to file the suit and they had ceased to be the owner of the suit property. The written statement was more or less in form of denial where, allegations regarding trespass on the suit property and want of right have been denied.

5. The trail Court after considering rival side pleadings framed issues as under.

1. "Whether this Court has no jurisdiction to try the suit?
2. Whether the plaintiff has no right to file this suit ?

3.Whether the plaintiff proves that defendants have trespassed over the land ad-measuring 118 x 93 ft. on the north of tenanted premises bearing Survey Nos.219/7 and 219/4 ?

4.Whether the plaintiff is entitled to mesne profits @ Rs.2/- per square yards per day from 28/11/19080 ?

5.Whether the plaintiff is entitled to possession and / or mesne profits ? If so, at what rate and from what date ?

6.What decree and order ?”

6.The findings on the issues are as under.

1.In the negative.

2.In the negative.

3.In the affirmative.

4.In the affirmative; - first part as per final order: Second part.

5.First part : In the affirmative.
Second part: As per final order.

6.As per final order.

7.The trail Court after considering the evidence accepted the case of the plaintiff and directed the defendant to put the plaintiff in possession of the suit property. The trial Court also directed that the matter be sent to the Commissioner for taking accounts to hold an inquiry as to the amount of mesne profit from the date of institution of suit till the delivery of the

possession to the plaintiff. Learned Judge also directed the defendant to pay cost of the litigation to the plaintiff and bear its own cost. Aggrieved by that judgment and decree, present Appeal is preferred.

8. Learned Advocate, Mr.A.A.Gandhi, for the appellant has taken this Court through the evidence led by parties and the judgment impugned herein. Learned Advocate, tried to impress that the trial Court committed an error in accepting the case of the plaintiff for the reason that the plaintiff's property had already vested in the Municipal Corporation and plaintiff had no cause of action. He also submitted that the trial Court committed an error in appreciating the evidence on the question of the property let out to the defendant and therefore, he submitted that the appeal may be allowed.

9. There is none present to represent the case of the respondent–original plaintiff.

10. It is clear from the record that the contentions of the defendant that the plaintiff has no interest in the property and the Municipal Corporation having become owner of the suit property has rightly been rejected by

the trial Court. Exh.51, is a copy of the judgment whereby, the sale by Municipal Corporation of the suit property of the plaintiff, has been declared to be bad in law and set aside. Obviously, the right, interest and title in the property would vest in the plaintiff only, because there is no other contention raised by the defendant so far as the title of the plaintiff is concerned.

11.So far as the use of the suit property is concerned, the parties have led oral evidence and there appears not any documentary evidence in support of the defendant's case for the suit property. It is an established fact that the possession of the suit property was taken and cordoned by the defendant. The defendant has not been able to establish his legal right to remain in possession of the suit property or to show how he was put in possession of the suit property. The document on basis of which the godowns were let out to the defendant do not include the suit property and, therefore, the trial Court accepted the case of the plaintiff and rejected the case of the defendant, while passing the decree. There appears not any perversity in appreciation of the evidence by the

trial Court and therefore, there appears no reason for this court to interfere with the judgment and decree impugned herein. The appeal must fail and stands dismissed. Notice is discharged. No order as to costs.

(A.L.DAVE, J.)

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